

## REMARKS

Reconsideration is respectfully requested.

## CLAIM REJECTIONS - 35 U.S.C. § 102

The Examiner has rejected Claims 19-22, 25-30, 47-57, and 61 under 35 USC §102, as allegedly being anticipated by Romano (US 5,803,093).

Applicant has amended Claims 19-22, 25-30, 47-57, and 61. Applicant believes that Applicant's Claims 19-22, 25-30, 47-57, and 61, as amended, are allowable with respect to 35 USC §102 and respectfully request that all such rejections be withdrawn.

The courts have ruled that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Also, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

With respect to independent claim 47, Applicant respectfully submits that Romano does not teach a kit with Applicant's limitations, as amended. For example, Romano does not teach "at least one receiving adapter comprising at least one access structured and arranged to flowably connect with said at least one Yorker tip of said at least one adapter cap; wherein said at least one receiving adapter comprises at least one threaded port structured and arranged to connect with the at least one second threaded opening of the at least one second container." Romano teaches a comb with a plurality of tubes that dispense chemicals onto the scalp of a user. In one embodiment of Romano (FIG. 1) nozzle 126 fits into fitting 112, whereby chemicals are squeezed through tubes 304 onto the user's scalp. Romano has another completely separate embodiment (FIG. 8) with fitting 612 that has threads 614, whereby chemicals are squeezed through tubes 304 onto the user's scalp. It is improper for the Examiner to combine the elements of fitting 112 with fitting 612 that has threads 614 because clearly, as taught, the embodiments are mutually exclusive. Romano does not teach combining these features into one embodiment, rather the features are alternates- the comb either has fitting 612 that has threads 614 OR it has fitting 112. Combining the two different types of fittings into one device is certainly not taught, nor would it be obvious to combine them, since the result would not

function as intended by Romano. Thus, it is respectfully submitted that rejection of Claim 47 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 54- Romano does not teach a flexible squeeze tube that can be folded to expel substantially all the air from the tube. FIG. 4 of Romano merely shows how the comb is molded during the manufacturing process. Thus, it is respectfully submitted that rejection of Claim 54 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 55- Applicant respectfully submits that Romano clearly does NOT teach an o-ring as suggested by the Examiner. FIG. 5 does not show an o-ring. Nowhere does Romano teach an o-ring. Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 55 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 57- Although containers are typically empty when manufactured, it is NOT obvious to SELL empty containers in kits in combination with Applicant's other kit elements. Therefore the Examiner's rejection of this Claim is improper. Thus, it is respectfully submitted that rejection of Claim 57 (and all Claims dependent therefrom) should be withdrawn.

Further Regarding Claim 57- Nowhere does Romano teach Applicant's permanent "linear" tube seal closure. The Examiner references FIGS. 4, 6, 7 of Romano. However, these FIGS. in Romano do NOT teach or show Applicant's limitation. Applicant's specification clearly states and shows that the bottom portions 532 of the flexible tubes 530 are sealed, as shown, for example, in FIGs. 24, 26, and 27. See Specification, Page 27, lines 29-31. The end of Romano tube 302 is not a permanent linear tube type seal closure. Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 57 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 61- Romano does not teach a flexible squeeze tube that can be folded substantially flat. The comb taught by Romano cannot be folded substantially flat. Thus, it is respectfully submitted that rejection of Claim 61 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 19- Applicant disagrees with the Examiner that the tubes of the comb in Romano are syringes. Applicant has amended Claim 19; Romano clearly does not teach a

plunger syringe. Thus, it is respectfully submitted that rejection of Claim 19 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 20- Romano clearly does NOT teach a catheter syringe (see Applicant's FIG. 1, syringe 140 and tubing 142), nor does Romano teach any kind of syringe with a capacity of about sixty cubic centimeters (see Romano column 3, lines 11-17; such dimensions preclude a volume of sixty cubic centimeters). Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 20 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 21- Romano clearly does NOT teach a syringe that comprises a flexible tube (see Applicant's FIG. 1, tubing 142). Romano specifically teaches that the fingers 304 are NOT flexible; the fingers 304 are rigid (Romano, col. 4, lines 5-10). Further, the fingers 304 of Romano MUST be rigid (not flexible) because Romano is a comb and must part hair and force it's way through tangles of hair to get to the scalp so it can apply the chemicals as intended. Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 21 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 25- Applicant respectfully submits that Romano clearly does NOT teach an o-ring as suggested by the Examiner. FIG. 5 does not show an o-ring. Nowhere does Romano teach an o-ring. Applicant respectfully points out, within the first two paragraphs of MPEP 706, "The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity," and "the examiner should never overlook the importance of his or her role in allowing claims which properly define the invention." Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 25 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 27- Applicant respectfully submits that the Examiner has apparently attempted to fabricate a valve (specifically a non-spill valve) out of thin air by improperly asserting that the following statement is somehow equivalent to a non-spill valve? "via by not

squeezing the first container 122 will effect in not spilling from spout 306" (Examiner's office action, page 5, lines 6-7). The Romano reference does not teach or show a non-spill valve. Applicant's specification states that a non-spill valve allows the contents of the bag to spill out when pressure is applied to the contents, and that the valve seals the bag when the bag's contents are not under pressure (pages 18-19). Applicant shows valve 192 in FIG. 8. Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 27 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 28- The Examiner has stated that Applicant's limitation of a lanyard is taught by Romano: "... lanyard, see for example (Figs. 4-14)" (Examiner's office action, page 5, line 7). Applicant respectfully submits that no lanyard is found within such Figures of Romano. The Examiner has pointed out no reference element, or pointed out anything within such figures that resembles a lanyard. Such a rejection is clearly improper. Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 28 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 29- The Examiner has stated that Applicant's limitation of a flexible bag is taught by Romano: "flexible bag (Figs. 4, 6, and 7; via plastic 314)" (Examiner's office action, page 5, line 9). Applicant respectfully submits that plastic 314 is "a molded rigid sheet of plastic" (see Romano, Column 4, lines 10-35; emphasis added by Applicant); plastic 314 is NOT a flexible bag. Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 29 (and all Claims dependent therefrom) should be withdrawn.

Applicant respectfully submits that Applicant would not normally repeat the following statement more than once, if at all, in an entire office action. However, Applicant respectfully submits that the present office action merits such restatement given the numerous clearly unsubstantiated rejections, and the cost and effort required to respond to such rejections in order to comply with the rules and law and be fully responsive. Applicant sincerely hopes to avoid wasting the Examiner's time and Applicant's time by efficiently moving the case forward. Applicant respectfully points out, within the first two paragraphs of MPEP 706, "The goal of

examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity," and "the examiner should never overlook the importance of his or her role in allowing claims which properly define the invention."

Regarding Claim 30- Romano does not teach at least one flexible bag with at least a bottom gusset. A gusset, according to Applicant's specification is "an extra piece of material used to give the flexible bag added size or strength in a particular location and typically a folded portion" (page 22, lines 6-7). See FIG. 20, element 342. Romano support 308 is clearly not a gusset (as improperly suggested by the Examiner). Applicant repeats here the above arguments that Romano doesn't even teach a flexible bag. Applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 USC §102 for this claim. Thus, it is respectfully submitted that rejection of Claim 30 (and all Claims dependent therefrom) should be withdrawn.

#### CLAIM REJECTIONS - 35 U.S.C. §103

The Examiner has rejected Claims 16-18, 23, 24, 31, and 32 under 35 U.S.C. § 103, as allegedly being unpatentable over Romano ('093).

Applicant repeats as though fully set forth here the above arguments regarding the Romano reference. Further, the Romano device is unrelated to Applicant's invention and it would not be obvious to modify Applicant's invention with Romano.

The Federal Circuit has enunciated several guidelines in making a § 103 obviousness determination. A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976)) (emphasis added). For the Examiner to establish a prima facie case of obviousness, the Examiner must contend that the teachings from the prior art *itself* or that knowledge generally available to one of ordinary skill in the art would appear to suggest the claimed subject matter to a person of ordinary skill in the art.

It is well settled that to support an obviousness rejection, the prior art must contain some teaching or suggestion to make the modifications suggested by the Examiner. In this regard, the

Federal Circuit has stated, "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." (emphasis added) *In re Fritch*, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992). Applicant respectfully submits that no such suggestion exists in the Romano to so modify or combine the elements to result in the Applicant's claimed invention. Furthermore, Applicant respectfully submits again that Romano neither teaches nor suggests Applicant's claimed invention.

Romano is non-analogous art. The inventions involve different fields of endeavor since the Romano reference has a different purpose and is used in different conditions than Applicant's invention. Specifically, Romano is a device used to treat the hair and the scalp of a user using a comb structure designed to dispense a hair treatment chemical. Applicant's invention is a device designed to provide a way to refill portable containers with a flowable material. The Romano reference is not reasonably pertinent to the problem with which the inventor was concerned because a person having ordinary skill in the art would not necessarily have expected to solve the problem of refilling containers by considering a reference dealing with hair and scalp treatment.

With respect to Claims 16-18, Applicant respectfully disagrees with the Examiner. The Examiner relies on *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 (7<sup>th</sup> Cir. 1977), for the proposition that any duplication of parts involves routine skill in the art. The *Bemis* case does not stand for the proposition that all duplication of parts is obvious. Rather, under certain circumstances, the duplication of parts may be obvious. Applicant respectfully submits that the Court in *Bemis* underwent a robust analysis of the specific facts at hand in that case to determine if duplication of parts in that particular case was obvious or not. Further, Applicant submits that a kit comprising a plurality of Applicant's receiving adapters is not obvious. Thus, it is respectfully submitted that the rejection of Claims 16-18 (and all Claims dependent therefrom) should be withdrawn.

With respect to Claim 23, Applicant respectfully disagrees with the Examiner that it would be obvious to one having ordinary skill in the art at the time the invention was made to modify Romano by having a travel bag in combination with Applicant's other kit elements. Although a travel bag by itself may be old, patents are almost always new combinations of old elements. Former Chief Judge Markey of the Federal Circuit has stated, "virtually all inventions

are 'combinations', and ... every invention is formed of 'old elements' ... Only God works from nothing. Man must work with the elements." H.T. Markey, *Why Not the Statute?*, 65 J. Pat. Off. Soc'y 331, 333-34 (1983).

With respect to Claim 24, Applicant respectfully disagrees with the Examiner that it would be obvious to one having ordinary skill in the art at the time the invention was made to have at least one container comprising a first capacity and a second capacity. The Figures (FIG. 6 and FIG. 8) cited by the Examiner are improper. For example, Applicant's limitation is not to any old container, but to SAID containers (which the limitation of being flexible, among many other distinguishing features) which FIG. 6 and FIG. 8 clearly are not from the teachings of Romano. Thus, it is respectfully submitted that the rejection of Claim 24 (and all Claims dependent therefrom) should be withdrawn.

Regarding Claim 32, The Examiner has provided no basis, reasoning, or support for rejecting Claim 32. Applicant respectfully submits that the Examiner has not established a prima facie case of obviousness under 35 USC §103 for this claim. Thus, it is respectfully submitted that rejection of Claim 32 (and all Claims dependent therefrom) should be withdrawn.

Applicant believes that all Claims are allowable with respect to 35 U.S.C. § 103, and respectfully request that all such rejections be withdrawn.

For the reasons given above, and after careful review of all the cited references, Applicant respectfully submits that the cited reference will not result in Applicant's claimed invention in the present Claims, as amended. But even if any such combination might arguably result in such claimed invention, it is submitted that such combination would be non-obvious and patentable.

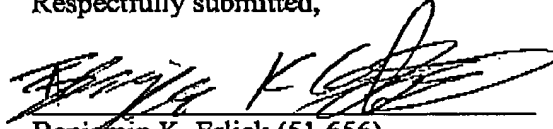
A petition and fee for extension of time under 37 C.F.R. § 1.136(a) have been submitted under separate cover. If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account NO. 50-1887.

Applicant respectfully requests that the Examiner, after having an opportunity to review this Office Action Response, grant a telephonic interview to Applicant's undersigned agent in order to discuss Applicant's response to the Examiner's first Office Action (before the Examiner prepares a second office action), to attempt to reach mutual understanding and clarify any

outstanding issues. Applicant respectfully requests that the Examiner call Applicant's undersigned agent at 602-263-9200 to schedule a telephonic interview at least two business days in advance to allow the Applicant's undersigned agent time to prepare and schedule the interview. For telephonic scheduling purposes, Applicant's agent is located in Arizona, in the Mountain Standard Time zone.

Respectfully submitted,

Date: March 23, 2006

  
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted, via facsimile, to the Patent and Trademark Office fax number (571)-273-8300 on March 23, 2006.

Date: March 23, 2006

Signature: 

Benjamin K. Erlick, Agent for Appl.